

**SETTLEMENT AGREEMENT BETWEEN THE
ARIZONA DEPARTMENT OF HEALTH SERVICES
AND
SOUTHWEST KEY PROGRAM, INC.**

This Settlement Agreement (“Agreement”) is entered into between the State of Arizona, by and through the Arizona Department of Health Services (“Department”), and Southwest Key Program, Inc. dba Southwest Key Programs, Inc. (“Licensee” or “SWK”) which holds the following licenses to operate behavioral residential facilities at thirteen (13) locations in the State of Arizona: BH4497, BH4486, BH4292, BH3662, BH4825, BH4051, BH3660, BH3661, BH4460, BH4474, BH1936, BH2426, BH3534 (collectively “Licenses”).

RECITALS

1. The Arizona Department of Health Services (“Department”) is statutorily charged with the authority to protect the health of the people of Arizona. Arizona Revised Statutes (“A.R.S.”) § 36-132(A)(1). To this end, the Director of the Department (“Director”) is authorized to “make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.” A.R.S. § 36-136(G). The Director is also required, pursuant to A.R.S. § 36-405(A) and (B)(2), to “adopt rules to establish minimum standards and requirements for the construction, modification and licensure of health care institutions necessary to assure the public health, safety and welfare;” and, by rule, to “[p]rescribe standards for determining a health care institution’s substantial compliance with licensure requirements.” According to A.R.S. § 36-401(A)(43), “[s]ubstantial compliance” means that “the nature or number of violations revealed by any type of inspection or investigation of a health care institution does not pose a direct risk to the life, health or safety of patients or residents.”

2. According to A.R.S. § 36-401(A)(21), “[h]ealth care institution” means “every place, institution, building or agency, whether organized for profit or not, that provides facilities with medical services, nursing services, behavioral health services, health screening services, other health-related services, supervisory care services, personal care services or directed care services... .” One classification of a health care institution is a residential care institution and a subclass of a residential care institution is a behavioral health residential facility. *See* A.R.S. §§ 36-401(A)(21), (40); Arizona Administrative Code (“A.A.C.”) § R9-10-102(A)(9). According to A.R.S. § 36-401(A)(40), a “[r]esidential care institution’ means a health care institution other

than a hospital or a nursing care institution that provides residents beds or residential units, supervisory care services, personal care services, behavioral health services, directed care services or health-related services for persons who do not need continuous nursing services.” According to A.A.C. R9-10-101(29), a “[b]ehavioral health residential facility” means a health care institution that provides treatment to an individual experiencing a behavioral health issue that: (a) [l]imits the individual’s ability to be independent; or (b) [c]auses the individual to require treatment to maintain or enhance independence.”

3. SWK currently holds thirteen (13) Licenses to operate behavioral health residential facilities throughout the State of Arizona to provide residential health-related services and behavioral health services to children.

4. According to A.R.S. § 36-425.03(A), children’s behavioral health program personnel, including volunteers, are required to have “a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1, or, within seven working days after employment or beginning volunteer work, shall apply for a fingerprint clearance card.”

5. Pursuant to complaints received by the Department and the authority under A.R.S. § 36-424(C), the Department conducted complaint investigation surveys on August 7 and 8, 2018 at SWK’s Facility located at 1601 North Oracle Road, Tucson, Arizona, (No. BH4486); and on August 9, 2018 at SWK’s Facility located at 1202 S. 7th Avenue, Suite 120, Phoenix, Arizona (No. BH4497). As a result of the on-site surveys, the Department determined that Licensee had multiple violations of A.R.S. § 36-425.03, because the Facility’s administrator had failed to ensure that personnel records maintained for each personnel member, employee, volunteer or student included documentation of the individual’s compliance with the fingerprinting requirements of A.R.S. § 36-425.03, thus posing a direct risk to the life, health and safety of patients. *See* A.A.C. § R9-10-111.

6. As a result of the violations, and the fact that Licensee holds licenses for multiple behavioral health residential facilities in Arizona, the Department held a Provider Meeting with Licensee on August 14, 2018. As a result of the Provider Meeting, Licensee agreed to “audit and verify [that] all current employees have current fingerprint clearance cards and are current in their minimum training requirements by September 14, 2018” and to provide “[e]vidence of compliance on fingerprint cards and training” to the Department in writing (“Provider Agreement”). Licensee failed to comply with the Provider Agreement.

7. The Licensee's failure to comply with the Provider Agreement and ensure that all its personnel members, employees, volunteers, and students have valid fingerprint clearance and training poses a direct risk to the life, health and safety of the patients in their care. A.R.S. § 36-427; A.A.C. § R9-10-111.

8. Pursuant to A.R.S. § 36-427(A)(1) and (3) and A.A.C. § R9-10-111, the Department issued a Notice of Intent to Revoke the Licenses on September 18, 2018. Licensee timely requested a hearing which was subsequently scheduled before the Office of Administrative Hearings (OAH), Case No. 2019-BRFL-0041-DHS for November 5, 2018, at 8:30 a.m. Pursuant to A.R.S. § 41-1092.06, Licensee requested and was granted an Informal Settlement Conference ("ISC"), which was held on October 9, 2018. As a result of the ISC, the following agreement was reached between Appellant and the Department.

AGREEMENT

As a result of discussions, in the interests of justice, judicial and administrative economy, and for good and valuable consideration, Licensee and the Department agree to the following:

1. SWK agrees to pay \$73,000 in a Civil Money Penalties to the Department no more than thirty (30) days after the effective date of the Agreement. *See A.R.S. § 36-431.01.*
2. SWK agrees to employ a third-party health care consultant ("Consultant") to evaluate the Licensee's quality management practices, quality management systems and effectiveness in addressing the health and safety concerns of the Department in their Arizona facilities no more than ninety (90) days after the effective date of the Agreement. The Director shall approve the Consultant before the Consultant begins the terms of their contract/employment with SWK. The Department may request SWK provide updates on the Consultant and their role at the Facilities at any time during the Consultant's tenure; SWK agrees to respond to these requests within twenty (20) working days from the request.
3. SWK agrees, no more than ninety (90) days after the effective date of this Agreement, to employ an on-site evaluator at each Arizona facility ("Evaluator") that is pre-approved by the Director, to ensure that Licensee is implementing changes to protect the health and safety of residents for no less than one (1) year, and up to two (2) years should the Director require the Evaluator to continue. The terms of the employment and duties of the Evaluator must be reviewed by the Director before the Evaluator's contract/employment begins. The Department

may request SWK provide updates on the Evaluator and their role at the Facilities at any time during the Evaluator's tenure; SWK agrees to respond to these requests within twenty (20) working days from the request.

4. SWK agrees that, pursuant to the authority in A.R.S. § 36-427(C), the admissions and readmissions of residents to the Licensed Facilities are restricted as of the date of the full execution of this Agreement and remain restricted until the Licensed Facilities are no longer in substantial violation of the requirements of licensure of a residential behavioral health facility and the Director is assured that the health and safety of the residents is no longer in immediate danger. The Director shall lift the admission/readmission restriction in writing and give adequate notice of such to SWK.

5. SWK agrees that, notwithstanding A.R.S. § 36-424(B) the Department may enter and inspect any of its Arizona Facilities to ensure compliance with this Agreement and compliance with the statutes and rules governing the Licenses without notice for a period of two (2) years from the effective date of the Agreement.

6. SWK agrees to voluntarily surrender License No. BH4292 located at 12030 North 113th Avenue, Youngtown, AZ 85363 ("Youngstown") and License No. BH4497 located at 1201 S. 7th Ave., Suite 120, Phoenix, AZ 85007 ("Casa Phoenix"). If residents are located at Youngstown or Casa Phoenix at the time of the execution of this Agreement, SWK agrees to relocate all residents within thirty (30) days from the effective date of this Agreement to a facility with the proper level of health care services and/or behavioral health care services for the residents being relocated.

7. SWK knowingly waives all rights to appeal the allegations in the Notices of Intent to Revoke for the Licenses pursuant to Title 41, Chapter 6, Article 10 and Title 12, Chapter 7, Article 6.

8. SWK knowingly waives all rights to appeal the surrender of License No. BH4292 pursuant to Title 41, Chapter 6, Article 10 and Title 12, Chapter 7, Article 6.

9. The Department agrees to file all necessary motions in Case No. 2019-BRFL-0041-DHS with OAH to ensure the consolidated cases are vacated in accordance with the terms of this Agreement.

10. Appellant agrees to comply with all rules, statutes and terms stated in this Agreement upon receipt of a copy of the fully executed Agreement, and to comply with all statutes and rules governing behavioral health residential facilities.

11. No provision or principle of law or equity that holds the terms and conditions of a written document shall be interpreted against the party who drafted the Agreement.

12. This Agreement may be modified only in writing.

13. A waiver of any requirement contained in this Agreement shall not be deemed to be a waiver of any other provision.

14. This Agreement shall be governed, construed and enforced by the laws of the State of Arizona.

15. Each party to this Agreement represents and warrants that the party executing this Agreement on behalf of each party is fully authorized to sign this Agreement and that no further approvals are required to be obtained from any persons or entities. This Agreement has been reviewed by the parties and their legal counsel, or the parties acknowledge that they had the opportunity to seek legal counsel concerning this Agreement, but voluntarily chose not to seek legal counsel.

16. If for any reason, any portions of this Agreement are adjudicated invalid or unenforceable by any court of competent jurisdiction, the court in its discretion will determine the extent of the invalidity or unenforceability of the provision or provisions as they relate to this Agreement. Furthermore, the remaining unaffected provision or provisions of this Agreement will be valid, fully enforceable and in effect. However, if the invalid or unenforceable provision or provisions materially alter the purpose and intent of this Agreement, any court of competent jurisdiction will have the power to reform this Agreement to the manifest intent and purpose of the parties to this Agreement.

17. This agreement may be signed in counterpart that shall together constitute a single agreement. It may be circulated by facsimile transmission and shall be effective on the date that all parties have signed a copy of this agreement.

SIGNATURE PAGE

Juan Sanchez, President and CEO Date
Southwest Key Programs, LLC
dba Southwest Key Programs

Dr. Cara Christ, Director Date
Public Health Services
Arizona Department of Health Services

APPROVED AS TO FORM:

MARK BRNOVICH
Attorney General

Patricia C. LaMagna Date
Assistant Attorney General
Attorney for Arizona Department of Health Services

Anna Finn, Esq. Date
Attorney for Southwest Key Programs, LLC